IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.601 OF 1987

Bhanudas Shankar Shelke ...Appellant

Vs.

The Special Land Acquisition Officer,
Metro Center No.1,Panvel
District Raigad ...Respondent

Mr.Rajiv Patil with Mr.Sachin Punde for the Appellant
Mr.Y.M.Nakhawa,A.G.P. for the Respondent.

CORAM: A.S.OKA, J.
DATED: APRIL 26,2006.

ORAL JUDGMENT:

1. Heard Shri Patil for the Appellant and the learned A.G.P. for State. The Appellant has taken exception to the Judgment and Award dated 21st April 1986 passed by the learned District Judge, Raigad at Alibag in a Reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act). The acquired land is from village Asudgaon, Taluka Panvel, District Raigad. A notification under section 4 of the said Act was issued on 3rd February 1970 notifying the said land for public purpose of planned development and utilisation of the lands in Trans Harbour Panvel and Trans Thane Creek area.

2. The Award was made under section 11 of the said Act on 29th March 1982. The Appellant who is the claimant did not accept the Award and applied for enhancement in the market

value under section 18 of the said Act. By the impugned Judgment and Award, the Reference Court held that the Appellant is entitled to market value at the rate of Rs.5/- per sq.meter and solatium under section 23(2) and interest under section 28 of the said Act.

3. Shri Patil for the Appellant invited my attention to the decision of the Division Bench of this Court dated 31st March 2004 in First Appeal no.757 of 2003 (State of Maharashtra Vs. Kamali Keshav Mhatre and others) and other connected matters. He pointed out that the Division Bench dealt with the Appeals arising out the references under section 18 of the said Act in respect of the land from the same village. He pointed out that the Division Bench divided the lands into three categories depending on the distance of the land from National Highway and has fixed the rates of the market value. He also placed reliance on another order of the Division Bench dated 31st August 2004 in First Appeal No.403 of 1991 (The State of Mahrashtra Vs. Shri Nathu P. Shelke and others). He submitted that the present case will be governed by the decisions of the Division Bench. The learned A.G.P. on behalf of State opposed the said submission by submitting that the compensation awarded by the Reference Court is just and proper and no interference is called for. He, however, did not dispute that the decisions of the Division Bench in cases of State of Maharashtra Vs.Kamali Keshav Mhatre an State of Maharashtra Vs. Shri Nathu P. Shelke and others in

respect of the lands from village Asudgaon acquired for the same public purpose under a notification of the same date.

4. I have considered the submissions. The Division Bench dealt with the Appeals arising out of acquisition of the land from village Asudgaon which was notified for the same public purpose by notification dated 3rd February 1970. The Division bench referred to the earlier decisions of the different Division Benches of this Court regarding the lands which were acquired for the same public purpose from Taluka Panvel, District Raigad. After considering the location of the acquired lands, the Division Bench came to the conclusion that the lands will have to be divided into three categories depending on its distance from Bombay Pune National Highway.

5. In my view, there is no reason why the test adopted by the Division Bench of this Court should not be applied to this case. The Division Bench has relied upon the decision in First Appeal no.754 of 1986 (Nama Padu Hudar and others Vs. State of Maharashtra). In the said decision, the Division Bench dealt with the acquisition of the land from villages Kamothe and Panvel in Taluka Panvel, District Raigad for the same public purpose. The Division Bench decided the Appeals into five groups depending upon the distance between the acquired lands and the National Highway and Zilla Parishad Road. The Apex court has approved the said decision by Civil Appeal No.1557 of 2006. Under the circumstances,

this Appeal will be governed by the decision of the Division Bench in the case of State of Maharashtra Vs. Kamali Mhatre (supra).

6. The evidence on record shows that the distance between the acquired land from National Highway is 800 meters. Thus, the acquired land will fall in the second category fixed by the Division bench in the case of Kamali (supra). For the second category market value fixed is Rs.26/- per sq.meter and after deduction of 10% on account of the development charges, the market value is fixed at the rate of Rs.23/- per sq.meter. In the present case same market value will have to be awarded.

7. So far as statutory benefits are concerned, as Award of the Special Land Acquisition Officer is made prior to 30th April 1992, the Appellant will not be entitled to benefit under section 23 (1-A) of the said Act.

8. Hence, I pass the following order :

i) Appeal is partly allowed.

ii) Impugned Judgment and Award is modified. The Appellant is entitled to market value at the rate of Rs.23/- per sq.meter together with statutory benefit under section 23(2) and Section 28 of the said Act.

iii) The Appellant will be entitled to proportionate costs through out.

iv) The Reference Court will calculate the amount compensation payable to the Appellant within a period of four months from the date of receipt of writ of this order.

v) The decree will be drawn only after the Appellant pays deficit court fee as per order passed in Civil Application No.3609 of 2005.

Judge.